Supreme Court, U.S.
FILED
JAN 6 1995
OFFICE OF THE CLERK

No. 94-1005

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

JOSEPH E. HARHAI,
Petitioner,

-vs-

THE HONORABLE GARY P. CARUSO, ET AL.,
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Filed on Behalf of:
ANTHONY GIUNTA, RESPONDENT

JOHN K. GREINER, ESQUIRE
PA I.D. #43583

BELDEN, BELDEN, PERSIN,
JOHNSTON & ZUZIK
Belden Building
117 North Main Street
Greensburg, PA 15601
Phone: (412) 834-0300

18 pp

## TABLE OF CONTENTS


| | PAGE: |
|---|---|
| STATEMENT OF THE CASE..... | 1-5 |
| ARGUMENT..... | 5-12 |
| CONCLUSION..... | 13 |


## TABLE OF AUTHORITIES


| CASE: | PAGE: |
|---|---|
| Butz v. Economou, 438 U.S. 478, 57 L.Ed.2d 895, 98 S.Ct. 2894 (1978)..... | 10 |
| Demoran v. Witt, 781 F.2d 155 (9th Cir., 1985)..... | 9 |
| Harper v. Jeffries, 808 F.2d 281 (3rd Cir., 1986)..... | 9 |
| Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)..... | 10 |
| Sellars v. Procunier, 645 F.2d 1295 (9th Cir., 1981) cert. den., 454 U.S. 1102, 70 L.Ed.2d 644, 102 S.Ct. 678 (1981)..... | 8 |

Sykes v. James, 13 F.3d 515 (2nd Cir., 1993), cert. den., _____ U.S. _____, 114 S.Ct. 604, 129 L.Ed.2d 867 (1994) 8

Thompson v. Burke, 556 F.2d 231 (3rd Cir., 1977)..... 9

Thompson v. Duke, 882 F.2d 1180 (7th Cir., 1989) cert. den., 495 U.S. 929, 109 L.Ed.2d 496, 110 S.Ct. 2167 (1990) 8

Turner v. Barry, 856 F.2d 1539 (D.C. Cir., 1988)..... 9

Wilson v. Rackmill, 878 F.2d 772 (3rd Cir., 1989)..... 9

## STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Where civil rights claims are brought against a probation officer for his failure to file a probation violation against the respondent's former wife, should certiorari be granted when this Court has previously refused to grant it following holdings that a probation or parole officer has absolute immunity?

II. Where RICO claims are presented against a probation officer by the ex-husband of the client which he supervised on a theory that the probation officer conspired with a guardian at litem, judges and lawyers to deprive the ex-husband of custody of a minor child, should certiorari be granted to review a holding that the claimed injury is personal and does not involve the requisite business or property interest for a RICO claim?

## STATEMENT OF THE CASE

The claims presented in this case arise from various domestic relations actions between the petitioner and his former wife, Jane Kaylor Hart, a respondent herein. These two parties were involved in a lengthy dispute before the Court of Common Pleas of Westmoreland County, Pennsylvania, concerning, inter alia, custody and support of their son. The litigation was lengthy and protracted, involving several different attorneys and judges over the passage of time. Eventually the Petitioner grew dissatisfied with the outcome of the proceedings and then initiated this lawsuit in the United States District Court for the Western District of Pennsylvania, alleging a variety of claims

against judges, attorneys, the court-appointed guardian of his son, a county agency, a private mental health institution and a probation officer, all of whom were involved in one way or another in the underlying domestic relations dispute. The original complaint alleged civil rights claims pursuant to 42 U.S.C. Sections 1983, 1985, 1986 and 1988, RICO claims pursuant to 18 U.S.C. Sections 1962 and 1964 and pendant state claims.

Motions to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure were filed on behalf of all of the named defendants. An amended complaint was filed shortly thereafter, with leave of court. The contents and averments of the amended complaint varied little from the original complaint.

Once again, Rule 12(b)(6) motions to dismiss were filed on behalf of the various defendants. The Honorable William L. Standish of the United States District Court entered a memorandum and order dated January 7th, 1994, dismissing with prejudice the Sections 1985 and 1986 Civil Rights claims regarding the respondent, Gary A. Falatovich, they were dismissed on the basis of his absolute immunity. He also dismissed the RICO claims as to each of the defendants. As to the judges and Anthony Giunta, the county probation officer, the claims pursuant to 42 U.S.C. Sections 1983 and 1988 were also dismissed with prejudice. As to the remaining defendants, the Section 1983 and 1988 claims were dismissed without prejudice and the Court specifically instructed the plaintiff to set forth each material facts

upon which the petitioner based his claim that the various defendants conspired to deprive him of his constitutionally protected rights. The pendant state claims asserted against each of these defendants were dismissed without prejudice and the Court indicated that they would be reinstated if the petitioner filed an amended complaint setting forth the federal causes of action with the requisite specificity.

A second amended complaint was filed by the petitioner. It was nearly identical to the original and first amended complaints. The District Court then dismissed all of the remaining federal claims with prejudice, based upon the petitioner's failure to set forth a cause of action upon which relief may be

granted.

A timely appeal was taken by the petitioner to the United State Court of Appeals for the Third Circuit. In a judgment order dated September 7, 1994, the Court of Appeals affirmed the judgment of the District Court. The petitioner now seeks review of the above judgments entered by the Court of Appeals and the District Court in his petition for writ of certiorari.

## ARGUMENT

The petitioner sets forth three reasons for which this court should grant the requested review:

(1) the district court incorrectly decided facts (Petition, p. 10);

(2) the district court applied the wrong law (Petition, p. 11); and

(3) the district court's judgment is wrong (Petition, p. 13).

As to each of the reasons, he simply sets forth the reasons for which he disagrees with the conclusions reached by the district court and affirmed by the court of appeals. He does not, however, state any reasons which are either special or important and, certainly, none which rise to the character sufficient to warrant a review by this court. It is simply impossible for this court to review every decision of a district court, or even a court of appeals, in which the losing party believes that the court incorrectly decided facts, applied the

Wrong law, or issued a judgment which was wrong.

Review by this court must be limited to matters which are of the utmost importance to our society and the administration of justice in this country. Nothing raised in the petition for writ of certiorari under consideration even hints at rising to such a character.

Petitioner made several claims against respondent, Anthony Giunta, including federal civil rights and RICO claims and other pendant state claims.

With regard to the basis on which the civil rights claims were dismissed against Mr. Giunta, a county probation officer, this court has denied certiorari in cases

in which similar issues were raised. Sykes v. James, 13 F.3d 515 (2nd Cir., 1993) cert. den., _____ U.S. _____, 114 S.Ct. 604, 129 L.Ed.2d 867 (1994) (parole officer absolutely immune in 1983 suit for claims that he submitted false testimony in state habeas corpus proceeding.) See also, Thompson v. Duke, 882 F.2d 1180 (7th Cir., 1989) cert. den., 495 U.S. 929, 109 L.Ed.2d 496, 110 S.Ct. 2167 (1990) (parole officials held absolutely immune from 1983 liability in connection with the failure to schedule and hold a timely parole violation hearing.) Sellars v. Procunier, 645 F.2d 1295 (9th Cir., 1981) cert. den., 454 U.S. 1102, 70 L.Ed.2d 644, 102 S.Ct. 678 (1981) (parole board officials are entitled to absolute immunity in 1983 suits for actions taken when processing parole applications.)

In this case, the petitioner alleged in his complaint that Mr. Giunta conspired with the other respondents to deprive him of custody and visitation of his minor child and that he refused to file a probation violation petition when he was informed by the respondent of a possible basis for a parole violation. The circuit courts have afforded absolute immunity from such civil rights claims. Turner v. Barry, 856 F.2d 1539 (D.C. Cir., 1988). Also Demoran v. Witt, 781 F.2d 155 (9th Cir., 1985). Thompson v. Burke, 556 F.2d 231 (3rd Cir., 1977). Harper v. Jeffries, 808 F.2d 281 (3rd Cir., 1986). Wilson v. Rackmill, 878 F.2d 772 (3rd Cir., 1989). The district court also noted that petitioner did not appear to have standing to bring suit against a probation officer for failing to file a probation violation

against another person. As such, the district court had reasons for properly dismissing the complaint.

Although this court has not issued an opinion squarely addressing the merits of this claim, in Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), a prosecuting attorney was held to be absolutely immune from 1983 claims relating to the filing of criminal charges. Similarly, in Butz v. Economou, 438 U.S. 478, 57 L.Ed.2d 895, 98 S.Ct. 2894 (1978), executives of the United States Department of Agriculture were afforded absolute immunity from 1983 claims relating to the initiating or continuing of an agency proceeding. This court stated:

> We also believe that agency officials

> performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such actS . . . The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete.

Butz, 438 U.S. at 515, 57 L.Ed.2d at 921. In this case, the claim presented is predicated upon the probation officer's failure to initiate a probation violation proceeding. This process is very much analogous, if not identical, to the processes at issue in Imbler and Butz for which the governmental officials were afforded absolute immunity. Therefore, it is respectfully submitted that there is

amble authority supporting the lower court's dismissal of the 1983 action as to respondent, Anthony Giunta and certiorari should not be granted.

With regard to the RICO claim against Mr. Giunta, petitioner simply disagrees with the conclusion of the district court, affirmed by the court of appeals, that he did not and could not allege injury to business or property requisite to the bringing of a RICO claim. His claims are personal. No review by this court of such a conclusion is warranted. Further, none of the other requisite elements of a RICO action were set forth with requisite specificity in the complaint or either of the amended complaints, as was raised by the respondents in the district court.

## CONCLUSION

The petitioner has not raised any issues which warrant the grant of certiorari. The matters raised in his petition are frivolous and without merit.

There is no unsettled question of law, nor is there a conflict among the circuits or between the federal courts and a state court of last resort as to any of the issues present.

Certiorari should not be granted.

Respectfully submitted;

**JOHN K. GREINER, ESQUIRE**
**PA I.D. #43583**
**BELDEN, BELDEN, PERSIN, JOHNSTON & ZUZIK**
Belden Building
117 North Main Street
Greensburg, PA 15601
Phone: (412) 834-0300

## CERTIFICATE OF SERVICE

I, **JOHN K. GREINER, ESQUIRE,** do hereby certify that three true and correct copies of the within **BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI** to the United States Supreme Court dated December 27th 1994, were served upon the following:

Peter P. Cherellia, Esquire
32 West Third Street
Greensburg, PA 15601
(attorney for Henry A. Hudson, Respondent)

Robert P. Boyer, Jr., Esquire
Three Gateway Center
22nd Floor
Pittsburgh, PA 15222
(attorney for Westmoreland Mental Health Center)

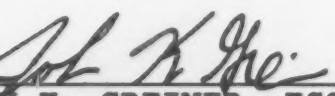
Jon M. Lewis, Esquire
205 Coulter Building
Greensburg, PA 15601
(attorney for William J. Wiker, Respondent)

Maryellen Gallagher, Esquire
1515 Market Street
Suite 1414
Philadelphia, PA 19102
(attorney for Gary P. Caruso,
John E. Blahovec, Charles E. Marker,
Gilfert M. Mihalich and
Joseph a. Hudock, Respondents)

David J. Singley, Esquire
501 Grant Building
Pittsburgh, PA 15219
(attorney for Westmoreland County
Children's Bureau)

H. Reginald Belden, Jr., Esquire
117 North Main Street
Greensburg, PA 15601
(attorney for Gary Falatovich,
Respondent)

Joseph E. Harhai, Pro Se
Box 47
Ruffsdale, PA 15679



JOHN K. GREINER, ESQUIRE
PA I.D. #43583